

EXHIBIT

1 I want the defendant to clearly understand that
2 that condition applies throughout the period of
3 time when he is incarcerated as well as after the
4 probation begins after his release from
5 incarceration.
6 As to the two counts of assault by means of a
7 dangerous weapon, I'm inclined to think that they
8 are duplicative of the armed robbery while masked.
9 But, in any event, I will impose a sentence of
10 probation, concurrent with the other probationary
11 sentence, so that that doesn't raise an issue of an
12 additional sentence.
13 As to the indecent assault and battery on a
14 person who has attained the age of fourteen, I'm
15 going to give the defendant a choice. And, Mr.
16 Cruz, if you want to consult with your client about
17 the implications of the choice, I think that's
18 certainly reasonable. And I'll tell you my
19 thinking about this.
20 Having heard the evidence in this case, I
21 think the evidence presented was sufficient to
22 establish the elements of the offense, and,
23 therefore, I think the case was properly submitted
24 to the jury and the conviction is proper.

1 However, the evidence, I think, quite clearly,
2 and I didn't understand the Commonwealth to contend
3 otherwise, did not indicate a sexual contact. That
4 is, it did not indicate any intention on the part
5 of the defendant to achieve any sort of sexual
6 gratification. And I think under the
7 circumstances, it would be appropriate to
8 communicate that message to those who will classify
9 him as a sex offender and to those who will make
10 decisions as to whether to petition under the
11 sexually dangerous person statute.
12 Now, the way that I would be inclined to
13 communicate that would be to place this conviction
14 on file with the defendant's consent, if he does
15 consent. Now, the implication of that, I think,
16 would be that it is not available for him on
17 appeal, and, therefore, he would not be in a
18 position to raise on appeal the question of law
19 that we talked about as to the nature of the intent
20 that is required for this offense. So I think
21 there's a bit of a tradeoff there for the
22 defendant, and certainly the defendant is entitled
23 to the advice of counsel in considering that issue.
24 MR. CRUZ: Your Honor, if I may, I believe

that placing the matter on file would nonetheless
 constitute a conviction, which would require his
 registering as a sex offender. What I would
 propose --

THE COURT: Yes, I think that's right.

MR. CRUZ: What I would propose to the Court,
 and that would be contingent on what the
 Commonwealth's position is, is that there is a
 provision under the new statutes relating to the
 sex offender registry whereby in certain
 circumstances, specifically if a person is charged
 with indecent assault and battery on a person age
 fourteen or older and it is a first offense, that
 upon motion of the Commonwealth the Court would
 have an option of relieving him of that obligation
 to register as a sex offender, despite the fact
 that a guilty in this particular charge has issued.
 So, that is an option to the Court.

THE COURT: Can you give me the citation?
 (Pause.)

MR. CRUZ: Your Honor, I do not have that
 cite, but I can get it for the Court. I believe
 it's General Laws Chapter -- I want to say it's
 Chapter 175, but I could be wrong -- that has

specifically to do with the issue of relieving

certain individuals under certain circumstances of

the obligation to register as a sex offender if the

court feels that there is no risk of re-offense.

And I believe in the way the court has set

this out and the trial -- the evidence at trial has

set out, there was no sexual factor involved.

THE COURT: All right. Your understanding is

that that would have to be on a motion of the

Commonwealth?

MR. CRUZ: I believe it states, "on motion of

Commonwealth," but I also believe it is on motion

of either party. I believe we have to have the

Commonwealth's consent, and I think that's the

issue.

THE COURT: Well, let me suggest this. Why

don't you find the statute, consult about it

together, submit a written motion in whatever form

you think the statute requires, and the

Commonwealth will, of course, take whatever

position it takes, and I will rule on the motion.

MR. CRUZ: That's fine. And, Your Honor, what

I can suggest is that if the court wishes to enter

a guilty filed today, which I don't think would be

Indictment No. 99-419-004, a jury having found

THE CLERK: Mr. Sok, please rise.

THE COURT: All right. Thank you.

MR. CRUZ: Yes, that's fine, Your Honor.

finding of guilty.

to that conviction being placed on file with a

now. But then, I take it, the defendant consents called upon to take a position on that issue right

THE COURT: All right. And you're not being

opportunity to review his motion when it's filed.

Commonwealth's rights, Your Honor, and I'll take an

MR. BANKS: I would just reserve the

to be heard on any of this?

THE COURT: All right. Mr. Banks, do you want

proceedings today.

it's something that would need to delay the

it appropriate. So, in other words, I don't think

Your Honor can review it and allow it if you feel

motion. And I can present it to the Court, and

statute if I have the Commonwealth's assent to the

here. I can file the motion citing the particular

as long as we have the consent of both parties

Court's allowance of the motion after sentencing,

a problem, that this issue can be addressed by the

1 you guilty of the offense of home invasion, you
 2 will harken to the sentence the Court has awarded
 3 against you, the Court having duly considered your
 4 offense. It is ordered that you be punished by
 5 confinement at the Massachusetts Correctional
 6 Institution at Cedar Junction for a term not to
 7 exceed twenty years and one day, nor less than
 8 twenty years. Eleven days of jail credit will be
 9 noted on the mittimus accompanying you to said
 10 institution, and you stand committed to said
 11 sentence.
 12 A Victim Witness Fee of sixty dollars,
 13 indigent counsel fee of one hundred dollars is
 14 assessed.
 15 Indictment No. 99-419-001, a jury having found
 16 you guilty of masked armed robbery, -002, the jury
 17 having found you guilty of masked armed robbery, as
 18 on -003, the Court this day orders you be sentenced
 19 to the Massachusetts Correctional Institution at
 20 Cedar Junction for a term not to exceed twelve
 21 years, nor less than eight years, on these
 22 indictments, and these are to run concurrently with
 23 each other and with the sentence imposed on -004.
 24 On Indictment No. 99-419-006, a jury having